

OGC Has Reviewed

OGC 78-4737
19 July 1978

MEMORANDUM FOR: Director of Personnel

STAT FROM :
Assistant General Counsel

SUBJECT : Medical Program for Employees and
Dependents Abroad

STAT 1. You have requested our opinion on whether the waiver provisions of may be interpreted liberally so as to resolve any doubt in favor of the employee. This subsection provides that dependents may receive a maximum of 120 days of treatment unless the Director of Medical Services determines that the illness was materially aggravated during the patient's stay abroad. When such a determination is made, treatment may be extended at Government expense until maximum benefit has been obtained. In the case posed to this Office, the Director of OMS is unable to state whether the condition was materially aggravated because of residence abroad, but cannot rule out that possibility. Your office has concluded that where such a doubt exists, it should be resolved in the employee's favor.

2. The statutory basis of the Agency's dependent overseas medical benefits program is section 941 of the Foreign Service Act (22 U.S.C. § 1156). This section provides that the Government will assume responsibility for all medical treatment for dependents exceeding \$35 for each illness or injury in excess of 120 days of hospitalization (or similar treatment) in cases of illness or injury which the Secretary, on the basis of professional medical advice, determines is caused by the fact that the dependent is or has been located abroad. Such language requires that the Secretary (or the Director of OMS in the case of CIA) determine that the illness or injury was caused by the dependent's service abroad. The statute does not say "probably caused" or "could be caused" but requires a specific conclusion by the appropriate official.

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3. The Director of OMS must weigh the evidence, utilizing his experience and whatever professional advice is available to him and ultimately make a medical determination whether the injury or disease was caused by the fact that the dependent was located abroad. If such advice is contradictory or lacks a specific degree of certainty, his decision is clearly more difficult but, nonetheless, a judgment must be made. The degree of certainty required before the Director can make such a determination is basically a medical rather than a legal one. We see no particular problem, however, in the Director of OMS utilizing a "preponderance test" or some alternative approach which is acceptable to the medical profession.

4. Since no statutory or regulatory restrictions are established on the length of any extension of treatment granted under [] it is our opinion that the Director of OMS may extend such treatment for such period he concludes reasonable under the circumstances.



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